

Remarks/Arguments

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

Claims 1-5, 7, 10-12 have been rejected as unpatentable over Misner, US 2002/0164943 in view of Oppermann et al., US 2003/0019527. Claims 13-20 and 22-24 have been allowed. Claims 8 and 9 have been indicated as containing allowable subject matter. Claims 6 and 21 have been canceled without prejudice.

Claim 1 recites each flap having opposite surfaces against which air pressure acts, differential air pressure acting on the opposite surfaces causing the flap to move about a hinge to enable airflow through the central opening, the hinge comprising a narrow portion of material formed between slots in the flap. Misner does not disclose a hinge comprising a narrow portion of material between slots in the flap (Office Action, page 3, para. 3) The Office states that it would have been obvious to provide each flap of Misner with a hinge comprising a narrow portion for the purpose of providing quicker relief than possible with an undivided flap (Office Action, page 4, para. 3).

If a proposed modification would render the prior art reference being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. MPEP §2143.01. The hinges (44a, 44b) of Misner are designed to bias the flaps (40) in an outward direction (Misner, page 2, para. 26). If the air exhauster of Misner were modified to have only narrow hinges, the hinges (44a, 44b) would be less likely to bias the flaps (40) because narrow hinges may not

provide such a biasing force. Thus, the air exhauster of Misner would no longer be satisfactory for its intended purpose.

Additionally, if a proposed modification of the prior art would require a substantial reconstruction and redesign of the primary reference, as well as a change to the basic principle under which the primary reference was designed to operate, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. §2143.01. Misner, the primary reference, discloses a one-piece molded air exhauster for a car (Misner, para. 22). Oppermann et al. discloses a reed valve with a plurality of petals (Fig. 6) for screwing to an internal combustion engine block (Oppermann et al. para. 31-32). Because the air exhauster of Misner has a one-piece construction, the modification proposed by the Office Action would require a substantial reconstruction and redesign of the molding process for constructing the air exhauster.

Furthermore, in rejecting claim 1 as obvious over Misner in view of Oppermann et al., it is respectfully suggested that improper hindsight has been used. Misner fails to teach or suggest an air exhauster with flaps having narrowed hinge portions. Thus, without reference to the teachings of the disclosure of the present invention, one of ordinary skill in the art would not have the requisite knowledge to modify Misner with Oppermann et al., a non-analogous and unrelated reed valve for use within an internal combustion engine, by utilizing flaps having narrowed hinge portions, as recited in claim 1. According to In Re Sponnoble, 160 USPQ at 243 (CCPA 1969), such hindsight is impermissible.

Claim 1, as well as claims 2-5 and 7-12 which depend from claim 1, are in condition for allowance.

The Office Action states that claim 25 is directed to a patentably distinct species and that the invention has been constructively elected by original presentation. (Office Action, page 2, para. 1).

Firstly, it is respectfully submitted that constructive election by original presentation applies to independent and distinct inventions (MPEP §821.03), not to a species of a disclosed generic invention and the generic invention itself. A species is inherently dependent upon, and related to, its generic invention.

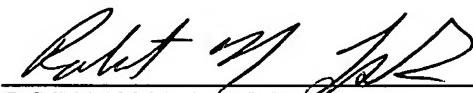
Secondly, in the first action on an application containing a generic claim to a generic invention and claims to more than one patentably distinct species embraced thereby, the examiner may require an election of species MPEP §806.04. The Office Action of June 13, 2006 is not the first action. All of the original claims were generic, not limited to any embodiment, and therefore did not embrace more than one species. Even now, claim 25 is the only claim limited to a single embodiment and the claims, as they currently stand, do not embrace more than one species. Thus, it is respectfully submitted that constructive election cannot, and did not, occur under these circumstances and claim 25 was improperly withdrawn from consideration.

Further, since the art of record does not disclose a pressure relief valve with a support portion as set forth in claim 25, claim 25 is in condition for allowance.

In view of the foregoing, allowance of the above-identified application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this
amendment to our Deposit Account No. 20-0090.

Respectfully submitted,


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